

REMARKS

This Application has been carefully reviewed in light of the Office Action mailed September 29, 2003. Claims 1-35 are pending in the application. Claims 1-14, 19-22, 27-30 and 35 stand rejected and Claims 15-18, 23-26 and 31-34 stand objected to. Claim 13 has been canceled without prejudice or disclaimer. Applicants have amended Claims 1, 8, 11, 19, and 27 and added Claims 36 and 37. Applicants submit that no new matter has been added with these amendments and additional claims. Applicants respectfully request reconsideration and favorable action in this case.

Section 102 Rejection

The Examiner rejects Claims 1, 2, 5-14, 19-22, 27-30, and 35 under 35 U.S.C. § 102(e) as being anticipated by U.S. Patent No. 6,169,739B1 issued to Isoyama (hereinafter "*Isoyama*"). Applicants respectfully submit that *Isoyama* does not disclose, teach, or suggest limitations recited in these claims.

A prior art reference anticipates a claim "only if *each and every element* as set forth in the claim is found, either expressly or inherently described," in that reference. *Verdegaal Bros. v. Union Oil Co.*, 814 F.2d 628, 631 (Fed. Cir. 1987) (emphasis added); *see also* M.P.E.P. § 2131 (quoting *Verdegaal Bros.*, 814 F.2d at 631); *see also* M.P.E.P. § 706.02 ("[F]or anticipation under 35 U.S.C. § 102, the reference must teach *every aspect* of the claimed invention either explicitly or impliedly."). In addition, "[t]he identical invention must be shown in as complete detail as is contained in the . . . claims" and "[t]he elements must be arranged as required by the claim." *Richardson v. Suzuki Motor Co.*, 9 USPQ 2d 1913, 1920 (Fed. Cir. 1989); *In re Bond*, 15 USPQ 2d 1566 (Fed. Cir. 1990); MPEP § 2131 (*emphasis added*).

For example, amended independent Claim 1 recites, in part, "appending a transport label to each received signal based upon the determination of the signaling type, each transport label comprising an indication of the signal's signaling type." For the teaching of this limitation, the Office Action offers the following passage from *Isoyama*: "As a layer-3 protocol, the network employs IPv6 protocol. According to this protocol, the layer-3 header of the IPv6 packet contains a priority field for establishing the identity of an upper layer application." Col. 2, Lines 57-60. However, Applicants submit that the transport label is not

equivalent to the priority field offered by the Office Action. In fact, the priority field merely indicates the type of content encoded in each packet, not "the signal's signaling type." Col. 2, Lines 57-60; Col. 3, Lines 3-16. For example, the priority field may indicate that the type of content is email, SNMP, video traffic, audio traffic, etc. Col. 3, Lines 3-16. A client can determine whether to transmit the signal as a connectionless or connection-oriented signal based on the type of content indicated in the priority field. Col. 3, Lines 3-30. Thus, the offered priority field is not a transport label as claimed.

Furthermore, even assuming, for the purpose of argument, that the priority field is a transport label as suggested by the Office Action, the priority field is not appended to a signal received from a "source peripheral network element at an ingress core network element." In fact, *Isoyama*, in contrast, merely discloses including a priority field in packets generated by the source code from which the packets originate (client 11a). Col. 2, Lines 57-60. An upper layer application of client 11a generates a packet including a destination address and the priority field. Col. 2, Lines 63-65. Client 11a examines the priority field to determine whether to transmit the packet as connectionless or connection-oriented signal. Col. 2, Lines 60-62. In the case of a connectionless packet, client 11a merely forwards the packet to a destination. Col. 3, Lines 3-14. In the case of a connection-oriented signal, client 11a transmits next hop resolution request messages and connection-setup messages to establish a connection between client 11a and 11b prior to sending packets. Client 11a and servers 12a and 12b do not append a priority field to a signal received from a "peripheral network elements at an ingress core network element" because the source code includes a priority field when the packets are generated. Thus, *Isoyama* fails to anticipate Claim 1 and its dependents 2-10.

Independent Claims 19 and 27 are allowable for analogous reasons. Claims 20-22 each depend from independent Claim 19 and are thus patentable over the cited art, for example, for at least the reasons discussed above with regard to Claim 19. Claims 29-30 and 35 each depend from independent Claim 27 and are thus patentable over the cited art, for example, for at least the reasons discussed above with regard to Claim 27. Applicants respectfully request reconsideration and allowance of these claims.

Additionally, Claim 8 recites, "wherein at least one of the transport labels comprises a plurality of sub-transport labels, each sub-transport label providing an instruction regarding

the associated signal's communication toward one of the destination peripheral network elements." For the teaching of this limitation, the Office Action offers the source and destination address fields included in a layer-3 header. However, Applicants submit that the source and destination address fields are not equivalent to sub-transport labels. Applicants submit that servers 12a and 12b determine the path based on the destination address by looking up routing instructions stored on the servers 12a and 12b. Thus, the destination address does not itself provide "instruction regarding the associated signal's communication toward one of the destination peripheral network elements," as do the claimed sub-transport labels. Accordingly, *Isoyama* fails to anticipate Claim 8 and its dependent Claim 9.

Claims 11, 21, and 29 are allowable for analogous reasons. Claims 12-14 each depend from independent Claim 11 and are thus patentable over the cited art, for example, for at least the reasons discussed above with regard to Claim 11. Claims 22 depends from Claim 21 and is thus patentable over the cited art, for example, for at least the reasons discussed above with regard to Claim 21. Claims 30 depends from Claim 29 and is thus patentable over the cited art, for example, for at least the reasons discussed above with regard to Claim 29.

Claim 10 recites, "wherein the sub-transport label at the bottom of the stack of sub-transport labels includes an interface identifier operable to specify an interface between a network element processing the signal and the destination peripheral network element." For the teaching of this limitation, the Office Action merely offers the IPv6 protocol and then states that it "inherently includes specifying the interface through which the datagram travel." Office Action, Page 6. Applicants submit that the interface as claimed is not equivalent to the path that a packet travels in a network. In fact, the path that a packet travels merely describes the physical route through a network, which is not "an interface between a network element processing the signal and the destination peripheral network element." Accordingly, *Isoyama* fails to anticipate Claim 10. Claims 14, 22, and 30 are allowable for analogous reasons. Applicants respectfully request reconsideration and allowance of these claims.

### Section 103 Rejection

The Examiner rejects Claims 3 and 4 under 35 U.S.C. § 103(a) as being unpatentable over *Isoyama* in view of U.S. Publication No. US 2001/0012295A1 issued to Wilford (hereinafter "*Wilford*"). Applicants respectfully traverse this rejection.

The Examiner has not met his burden of establishing a *prima facie* case of obviousness in making these rejections. According to M.P.E.P. §2143, to establish a *prima facie* case of obviousness, three criteria must be met. First, there must be some suggestion or motivation to combine the references. Second, there must be a reasonable expectation of success. Third, the prior art combination of references must teach or suggest all the claim limitations. Applicants note that the Examiner has failed to satisfy at least one of the elements of non-obviousness, which are required to support a proper §103 analysis.

With respect to the third criterion of non-obviousness, the Examiner has not shown how the proposed combination teaches each and every limitation of the claimed invention. This has been evaluated thoroughly in the Applicants' response to the Examiner's 35 U.S.C. § 102(e) rejection of Claim 1 from which Claims 3 and 4 depend. Therefore, Applicants respectfully submit that Claims 3 and 4 are patentably distinct from the proposed combinations. Favorable action is therefore respectfully requested.

#### **Allowable Subject Matter**

Applicants note with appreciation the Examiner's indication that Claims 15-18, 23-26, and 31-34 are objected to as being dependent upon a rejected base claim, but would be allowable if rewritten in independent form including all of the limitations of the base claim and any intervening claims. These claims depend from independent Claims 1, 11, 19, and 27 as shown above to be allowable. Thus, Applicants respectfully request the withdrawal of the objections to Claims 15-18, 23-26, and 31-34.

#### **Reconsideration of Information Disclosure Statement**

Applicants request that the Examiner consider the art submitted in Information Disclosure Statements mailed to the United States Patent and Trademark Office on October 23, 2001, March 26, 2002, April 19, 2002, June 20, 2002, August 6, 2002, November 13, 2002, and June 23, 2003. For the Examiner's convenience, Applicants submit herewith a copy of these Information Disclosure Statements with the appropriate 1449-PTO forms.

**CONCLUSION**

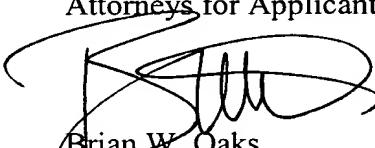
Applicants have made an earnest attempt to place this case in condition for allowance. For the foregoing reasons, and for other reasons clearly apparent, Applicants respectfully request full allowance of all pending claims.

If the Examiner feels that a telephone conference would advance prosecution of this Application in any manner, the Examiner is invited to contact Brian W. Oaks, Attorney for Applicants, at the Examiner's convenience at (214) 953.6986.

An additional filing fee of \$18.00 and a check is enclosed herewith. The Commissioner is hereby authorized to charge any additional fees or credit any overpayment to Deposit Account No. 02-0384 of BAKER BOTTS L.L.P.

Respectfully submitted,

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